

Howard Kaloogian, State Bar No. 118954
 Lowell Robert Fuselier, State Bar No. 14070
 David T. Hayek, State Bar No. 144116
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 Carlsbad, California 92008
 Tel. 760-522-1802
 Fax. 760-431-1116
Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT
 Southern District of California**

SAN DIEGO MINUTE MEN

Plaintiff,

vs.

DALE BONNER in his Official Capacity
 as Agency Director, Business,
 Transportation and Housing Agency;
 WILL KEMPTON in his Official
 Capacity as CalTrans Director; PEDRO
 ORSO-DELGADO in his Official
 Capacity as Caltrans District Director and
 DOES 1 through 50,

Defendants.

Case Number: 08CV0210 WQH [RBB]

**DECLARATION OF LOWELL ROBERT
 FUSELIER**

Hearing Date: October 27, 2008

Hearing Time: 11:00 a.m.

Court: Courtroom 4

**NO ORAL ARGUMENT UNLESS
 REQUESTED BY THE COURT**

I, Lowell Robert Fuselier, declare as follows:

1. All of the facts set forth herein are within my personal knowledge; if called as a witness, I could and would testify competently thereto.
2. I am an attorney duly licensed to practice before this Court and I am one of the attorneys who represent Plaintiff San Diego Minutemen in the above-entitled matter.
3. As my office has continued its investigation into the facts and circumstances of the original complaint, new facts have come to light which evidence that other officials of the State of California were intimately and substantively involved in the decision

1 to violate Plaintiff's civil rights with respect to the revocation of Plaintiff's
2 encroachment permit and removal of the courtesy sign bearing Plaintiff's name. The
3 evidence further suggests a conspiracy among certain of these officials to so act as
4 alleged in the original complaint and to continue to act to deprive Plaintiff of further
5 due process and first amendment rights with respect to the adoption of additional
6 highway segments pursuant to the Adopt-A-Highway program. Such evidence
7 includes a letter from Gil Cedillo and Joe Coto of the Latino Legislative Caucus
8 memorializing their agreement with Defendant Kempton to deprive Plaintiff of its
9 civil rights.

10 4. In addition, since the original complaint was filed new claims have arisen as a result
11 of a continuing course of conduct designed to 1) treat Plaintiff differently than other
12 participants in the Adopt-A-Highway program, 2) violating Defendants' own
13 established procedures and guidelines regarding highway adoption, 3) conduct a
14 secret investigation of Plaintiff and its members as a means of gaining "leverage"
15 over them to further the goals of the conspiracy, and 4) other acts in furtherance of
16 the conspiracy to deprive Plaintiff of its civil rights.

17 5. Further, new evidence of the *mens rea* of each of the defendants (both current and
18 proposed new defendants) in engaging in the conduct described in the original
19 complaint and the additional facts and circumstances described in the proposed First
20 Amended Complaint warranting additional claims for relief. This advance
21 knowledge and the intentional effort to deprive Plaintiff of its civil rights, along with
22 all of the other facts pleaded in the operative complaint and proposed First Amended
23 Complaint, are *prima facie* evidence entitling Plaintiff to assert a claim for punitive
24 damages in this action.

25 //

26 //

27 //

1 6. This motion is not made for any improper purpose; rather, it is made in the interests
2 of justice and to provide the most efficient means of resolving all of the claims
3 against all appropriate parties arising from common facts and circumstances. The
4 alternative would be to file a separate action asserting these claims against present
5 defendants and the new defendants, resulting in duplication of effort and waste of
6 scarce judicial resources.

7 7. After preparing the proposed First Amended Complaint, on September 8, 2008, I
8 forwarded, via facsimile, a copy of the complaint with a "Stipulation for Filing of
9 Amended Complaint to counsel for the present defendants, Jeffrey Benowitz, Esq.
10 with a letter requesting that his clients stipulate to the filing of the First Amended
11 Complaint. A true and correct copy of the letter and stipulation are collectively
12 hereto attached as Exhibit "A."

13
14 I declare under penalty of perjury under the laws of the United States of America that
15 the foregoing is true and correct.

16
17 EXECUTED this 15th day of September, 2008, at Carlsbad, California.

18
19 /s/ Lowell Robert Fuselier
20 Lowell Robert Fuselier, Esq.

EXHIBIT A

KALOOGIAN & FUSELIER, LLP

2382 Faraday Ave., Suite 130
Carlsbad, CA 92008
(760) 431-1116 (fax)

September 8, 2008

VIA FACSIMILE ONLY

619-688-6905

Jeffrey R. Benowitz, Esq.
Office of General Counsel
California Department of Transportation
M/S 130
4050 Taylor Street
San Diego, California 92110

**RE: San Diego Minutemen v. Caltrans, et al.
Southern District of California Case No. 08CV0210 WQH RBB**

Dear Mr. Benowitz:

Our office is going to amend the complaint to add parties, factual allegations, and a request for additional relief. Attached you will find a copy of the proposed Amended Complaint and a stipulation for your signature.

Should you chose not to stipulate to the amendment of the complaint, we will apply for a motion date to have the matter considered by the Court.

Your prompt response is requested. If we do not have your stipulation by Friday, we will move the court for relief.

Respectfully,

KALOOGIAN & FUSELIER, LLP

A large, stylized handwritten signature in black ink, appearing to read 'Lowell', is written over the printed name and title of the signatory.

Lowell Robert Fuselier
Direct Line 760-522-1802

TRANSMISSION VERIFICATION REPORT

TIME : 09/08/2008 15:03
NAME : K F LLP
FAX : 7604311116
TEL : 7605221802
SER.# : J6J266339

DATE, TIME	09/08 14:56
FAX NO. /NAME	16196886905
DURATION	00:07:17
PAGE(S)	25
RESULT	OK
MODE	STANDARD ECM

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Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT
 Southern District of California**

SAN DIEGO MINUTEMEN, An
 Unincorporated Association,

Plaintiff,

vs.

CALIFORNIA BUSINESS
 TRANSPORTATION AND HOUSING
 AGENCY'S DEPARTMENT OF
 TRANSPORTATION; DALE BONNER,
 Individually and in his Official Capacity as
 Agency Director, Business, Transportation
 and Housing Agency; WILL KEMPTON,
 Individually and in his Official Capacity as
 CalTrans Director; PEDRO ORSO-
 DELGADO, Individually and in his Official
 Capacity as Caltrans District Director; Joe
 Coto, an individual; Gilbert Cedillo, and
 individual; and DOES 1 through 10,

Defendant.

Case Number: 08CV0210 WQH [RBB]


**STIPULATION FOR FILING OF
 AMENDED COMPLAINT**

IT IS HEREBY STIPULATED by and between the parties hereto through their respective
 attorneys of record that Plaintiff may file an Amended Complaint, a copy of which is attached hereto.

IT IS FURTHER STIPULATED that the Defendants who have already appeared waive notice and
 service of the amended complaint and shall not be required to answer the amended complaint, and
 that all denials, responses and affirmative defenses contained in the answer filed by Defendants to

1 the original complaint shall be responsive to the amended complaint.

2
3
4 Dated: 9-8-08



Lowell Robert Fuselier
KALOOGIAN & FUSELIER, LLP
Attorneys for Plaintiff,
SAN DIEGO MINUTEMEN

5
6
7
8 Dated: _____

Jeffrey R. Benowitz, Esq.
Office of General Counsel
California Department of Transportation
Attorney for Defendants
DALE BONNER; WILL KEMPTON;
PEDRO ORSO-DELGADO